

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/691,109

Group Art Unit: 2141

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Examiner: Brian J Gillis

Applicant: Alex Conta

Attorney Docket: TRA-084

Title: Methods and Apparatus for Implementing Multiple Types of Network Tunneling in a Uniform Manner

Commissioner for Patents
Alexandria, VA 22313

Sir:

REPLY BRIEF

On December 10, 2007, the Applicant filed its Brief on Appeal. On February 6, 2008, the Examiner filed the Examiner's Answer. The Answer contains one new legal argument which this Reply Brief addresses.

Status of the Claims

This application was filed with claims 1-40. On February 7, 2007, claim 10 was canceled and claims 11-13 were withdrawn from consideration.

The final rejection of claims 1-9 and 14-40 was appealed on October 11, 2007. Therefore, claims 1-9 and 14-40 are the claims on appeal.

Grounds of Rejection to be Reviewed on Appeal

Thirteen issues are presented on appeal:

- a) whether claims 31, 32, and 36 are anticipated under 35 U.S.C. §102(e) by Shrader;
- b) whether claims 1-8, 15, 22, and 25 are obvious under 35 U.S.C. §103(a) over Hauck in view of Greaves;
- c) whether claims 9 and 35 are obvious under 35 U.S.C. §103(a) over Shrader in view of Hauck;
- d) whether claim 14 is obvious under 35 U.S.C. §103(a) over Shrader in view of Hauck and further in view of admitted prior art;
- e) whether claims 16-21, 23, and 28 are obvious under 35 U.S.C. §103(a) over Hauck in view of Greaves and further in view of Miller;
- f) whether claim 24 is obvious under 35 U.S.C. §103(a) over Hauck in view of Greaves in view of Miller and further in view of Rekhter;
- g) whether claim 26 is obvious under 35 U.S.C. §103(a) over Hauck in view of Greaves and further in view of Shrader;
- h) whether claim 27 is obvious under 35 U.S.C. §103(a) over Hauck in view of Greaves in view of Shrader and further in view of Tsirtsis;
- i) whether claims 29 and 30 are obvious under 35 U.S.C. §103(a) over Hauck in view of Greaves and further in view of admitted prior art;
- j) whether claims 33 and 38 are obvious under 35 U.S.C. §103(a) over Shrader in view of Miller;

k) whether claim 34 is obvious under 35 U.S.C. §103(a) over Shrader in view of Miller and further in view of Rekhter;

l) whether claim 37 is obvious under 35 U.S.C. §103(a) over Shrader in view of Tsirtsis; and

m) whether claims 39 and 40 are obvious under 35 U.S.C. §103(a) over Shrader in view of admitted prior art.

Argument

In the Applicant's Brief, it was argued on pages 14-19, that the Greaves reference is from non-analogous art and actually teaches away from the invention.

On page 21 of the Examiner's Answer, the Examiner cites *In re Oetiker*, 24 USPQ2d 1443 (Fed. Cir. 1992) to support his argument that the Greaves reference is analogous art.

The Examiner has essentially argued that the invention and all of the cited art, including Greaves, are in the broad field of "data transfer" and that all data transfer teachings are "reasonably pertinent to the particular problem with which the applicant was concerned". Here is where the Examiner cites *Oetiker* but fails to cite a page number. The complete citation should be *In re Oetiker*, 24 USPQ2d 1443 at 1445 (Fed. Cir. 1992) citing *In re Deminski*, 230 USPQ 313, 315 (Fed. Cir. 1986). Based on a complete reading of *Oetiker*, it is believed that the Examiner only read the headnote.

In *Oetiker*, the invention was a hose clamp and the Examiner argued that the cited art all fell within the broad field of "fasteners". The Examiner cited the Applicant's own earlier patent which concerned a hose clamp and another reference which *Oetiker* argued was non-analogous. The other reference involved a clothing fastener. Although the Board of Appeals agreed with the Examiner that hose clamps and garment hooks were both in

the art of “fasteners”, the Court did not and reversed the Board and the Examiner holding that the references were improperly combined.

Although the art of fasteners is somewhat older than the art of data transfer, the art of data transfer is now quite mature and encompasses many diverse arts which are not pertinent to each other. Thus, the argument being made by the Examiner in the instant case is *analogous* to the argument made by the Examiner in the *Oetiker* case and according to Federal Circuit precedent, must fail.

Respectfully submitted,

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